

**RESOLUTION NO. 2018-21**

**A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AUTHORIZING AND DIRECTING THE FILING OF A LAWSUIT SEEKING A DECLARATION THAT THE PROVISIONS PUNISHING ELECTED OFFICIALS SET FORTH IN SECTION 790.33, FLORIDA STATUTES, FOR VIOLATING THE PREEMPTION RELATED TO THE REGULATION OF FIREARMS AND AMMUNITION ARE INVALID, AND INVITING OTHER LOCAL GOVERNMENTS TO JOIN THE LAWSUIT; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, over the past several years there have been a number of discussions regarding what steps, if any, should be taken to implement gun law reforms; and

**WHEREAS**, in Section 790.33, Florida Statutes, the State of Florida (a) declared that it is occupying the whole field of regulation of firearms and ammunition, to the exclusion of all existing and future county or city ordinances, regulations, or rules, (b) purports to prohibit the enactment of any future ordinances or regulations “relating to firearms,” and (c) also purports to create potential liability for damages for actions other than ordinances and regulations, including any “measure, directive, rule, enactment, order, or policy promulgated or caused to be enforced”; and

**WHEREAS**, the purported preemption, by using the terms “relating to firearms” and “any measure, directive, rule, enactment, order or policy promulgated,” is extremely broad and vague, and could apply to a panoply of measures that the Village may like to consider enacting; and

**WHEREAS**, the potential violation of the broad and vague preemption of firearm regulation in Section 790.33, Florida Statutes, carries the risk of onerous and punitive

consequences, including but not limited to damages up to \$100,000 and fines up to \$5,000 (for which the official may be personally liable), removal from office by the Governor without due process of law, and a prohibition of the use of public funds to pay or reimburse the official for fines, damages or defense costs (collectively, the “Onerous Preemption Penalties”); and

**WHEREAS**, as a result of the Onerous Preemption Penalties, the Village Council and its members fear taking any steps that could even remotely be viewed as a violation of the preemption, creating a chilling effect upon Village action and preventing the Village Council from responding to the petitions and requests of the Village’s residents consider actions as it determines to be appropriate; and

**WHEREAS**, the Village Council and its members may desire to consider various reasonable measures related to firearms or other measures related to guns, but have refrained from doing so because they could possibly be viewed as falling under the preemption and be subjected to the Onerous Preemption Penalties; and

**WHEREAS**, the Onerous Preemption Penalties strike at the core of the American system of democratic representation: they suppress the voice of the local electorate through intimidation of local elected officials; and

**WHEREAS**, the Onerous Preemption Penalties infringe on the free speech rights of the Village Council and its members, and interfere with their ability to perform their official duties; and

**WHEREAS**, the Onerous Preemption Penalties infringe upon the legislative immunity the members of the Village Council enjoy under law when casting votes in their official capacities; and

**WHEREAS**, the portion of the Onerous Preemption Penalties related to the removal from office by the Governor conflicts with Article 4, Section 7 of the Florida Constitution, by allowing the Governor to remove a municipal official who has not been indicted for any crime, and violates due process; and

**WHEREAS**, on February 26, 2018, the City of Weston passed Resolution 2018-30, authorizing and directing its City Attorney (Weiss Serota Helfman Cole & Bierman, the “Firm”) to file a lawsuit seeking a declaration that the provisions punishing elected officials set forth in Section 790.33, Florida Statutes, for violating the preemption related to the regulation of firearms and ammunition are invalid (“Lawsuit”), and invited other local governments to join the Lawsuit; and

**WHEREAS**, the Village desires to join the Lawsuit and invite other local governments to join also; and

**WHEREAS**, the Village Council believes it is in the best interest of the citizens and residents of the Village to file a lawsuit seeking a declaration that the Onerous Preemption Penalties are invalid and urging other local governments to join the lawsuit as plaintiffs with the Village.

**NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA AS FOLLOWS:**

**Section 1.**     **Recitals.** Each of the above-stated recitals are hereby adopted, confirmed, and incorporated herein.

**Section 2.**     **Filing of a Lawsuit.** The Village Council hereby authorizes and directs the filing of a lawsuit naming the Village and those individual Members of the Council (in their official capacity) who choose to participate, as plaintiffs, seeking declaratory and other



appropriate relief to challenge the Onerous Preemption Penalties contained in Section 790.33, Florida Statutes, based upon any appropriate legal theories, including those set forth above.

**Section 3.**     **Representation.** The Firm is hereby retained to represent the Village in this litigation. The Firm will charge the Village a flat fee of \$10,000 to represent the Village and the individual Members of the Council (in their official capacity) who choose to participate as plaintiffs, for the litigation, including all appeals. If more than 15 cities choose to have the Firm represent them, the flat fee will be reduced by 1% for each city over 15 up to a maximum reduction of 25% (which would lower the fee to \$7,500 if 40 or more cities have the Firm represent them), and refund any amounts paid in excess of the flat fee. The Village also acknowledges that the Firm will be representing other local governments and officials in this lawsuit and waives any conflicts related to such representation. The Firm's retention is subject to execution of a retainer agreement between the Village and the Firm consistent with the terms set forth herein and which addresses any conflict of interest waivers.

**Section 4.**     **Invitation.** The Village Council invites and urges other local governments and elected officials to join the Village as plaintiffs in the lawsuit and to coordinate their efforts with the Village.

**Section 5.**     **Distribution.** The Village Clerk is directed to distribute this Resolution to all local governments in Miami-Dade County.

**Section 6.**     **Implementation.** The Village Council hereby authorizes the Village Manager to take any action which is reasonably necessary to implement the purpose of this Resolution.

**Section 7.**     **Effective Date.** This Resolution shall be effective immediately upon adoption.

PASSED and ADOPTED this 24<sup>th</sup> day of April 2018.

  
MAYOR MAYRA PEÑA LINDSAY

ATTEST:

  
JENNIFER MEDINA, CMC  
VILLAGE CLERK



APPROVED AS TO FORM AND LEGAL SUFFICIENCY

  
VILLAGE ATTORNEY